IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

Crl.MC.No. 3496 of 2007()

L.P.NO.6 OF 2003 OF J.F.C.M, ADIMALI

PETITIONER:

BABU, AGED 55, S/O.LATE APPY,
CHAMBACKAL HOUSE, PERUMBADAPPU KARA,
EDAKOCHI VILLAGE, KOCHI TALUK, ERNAKULAM
DISTRICT.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SRI.E.M.MURUGAN

RESPONDENTS:

STATE OF KERALA, REP. BY
DEPUTY SUPERINTENDENT OF POLICE,
CBCID, CFS, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3496 of 2007

Dated this the 23rd day of November, 2007

ORDER

Petitioner is the 4th accused in an indictment for offences punishable under Section 489 B & C r/w 34 I.P.C. The petitioner was not available for trial. The case against him has been transferred to the list of Long Pending Cases. Coercive processes have been issued against the petitioner. The petitioner apprehends imminent arrest now. The crime was registered as early as in 1991. Committal proceedings was registered in 1997. The co-accused (Accused 1 to 3) available stood trial. Accused 2 and 3 were acquitted and the 1st accused was found guilty, convicted and sentenced.

2. The petitioner has come to this Court with a prayer that the proceedings against him now pending in the list of Long Pending Cases may be quashed. In the alternative it is prayed that there may be a direction to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. The decision in [**Moosa v. Sub Inspector of Police** [2006 (1) KLT 552] is authority for the proposition that the absconding co-accused cannot take advantage of the inadequacy of evidence in a trial held against accused who were available for trial to claim any benefit

or advantage. The learned counsel for the petitioner contends that in as much as the 2nd and 3rd accused have been acquitted, there will be no linkage between the petitioner, the 4th accused and the 1st accused who has been found guilty. In these circumstances, the prosecution against him would be a futile exercise, contends the learned counsel for the petitioner.

4. I am of opinion that it is for the petitioner to appear before the court concerned and claim discharge or acquittal at the appropriate stage. At the present stage, invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C, I find absolutely no justification in the prayer to quash the proceedings against the petitioner, who, as per the allegation, has been absconding from 1991. The petitioner may appear before the court concerned and seek discharge if he thinks he is entitled for the same. Needless to say, any court before which a plea of discharge is raised will have to consider the same on merits and in accordance with law.

5. The learned counsel for the petitioner submits that he is innocent. He had no inkling about the pendency of these proceedings. He has not received any notice or summons from the court or the Investigating Officer. The petitioner is willing to surrender before the court and seek regular bail. But the petitioner apprehends that his

application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

6. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

7. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-